

In re) Fair Hearing No. 12,782
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying her request to exclude from a lump sum payment she received in January, 1994, a tuition payment to attend college. The issue is whether the tuition payment was "substantially similar" to other expenses that are allowed as deductions from lump sum income under the regulations.¹

The facts are not in dispute. During the period of time at issue the petitioner was a recipient of ANFC and was attending college. In January, 1994, she received a lump sum legal settlement of \$5,844. The Department allowed as a deduction from that lump sum certain payments the petitioner made for car repairs so that she could commute to her

¹The request for Fair Hearing in this matter was filed on April 20, 1994. The parties informed the Board that the matter would be submitted to the Board based on stipulated facts and written arguments. On January 22, 1997, after several inquiries from the Board, the petitioner's attorney furnished documentation of the petitioner's tuition payments for the Spring 1994 semester. The hearing officer then notified the parties that he felt there was still an unresolved factual issue. The petitioner did not file a response to the hearing officer's concerns until August, 1997. The Department did not file its response until December, 1997.

college classes. However, the Department denied as a deduction the tuition payments of \$1,200 the petitioner made to attend college that semester. As a result, the Department determined that the petitioner was overpaid \$638 for the ANFC she had received for January, 1994, and that she would be ineligible for ANFC until May 11, 1994.²

The Department does not appear to dispute that the petitioner made the then-overdue tuition payments from her lump sum, and that those payments were essential for her to continue her education.

ORDER

The Department's decision is reversed.

REASONS

Welfare Assistance Manual (W.A.M.) § 2250.1 includes the following provisions (emphasis added):

²It appears that the petitioner voluntarily closed her ANFC grant effective February 1, 1994, and did not reapply until sometime in April, 1994; and was found eligible on the basis of that application as of May 11, 1994. If the petitioner prevails in this matter it appears that she may have been entitled to resume receiving ANFC sometime in April, 1994. It does not appear, however, that a favorable decision would reduce or eliminate the overpayment that occurred in January, 1994. The Department has indicated that it has taken no action on the overpayment during the pendency of this Fair Hearing. What effect, if any, the January 1994 overpayment would have on any retroactive payments of ANFC for April and May, 1994, has not been discussed by the parties. The Department represents that the petitioner has not received ANFC since July, 1996.

Lump sum payments which are not excluded should be added together with all other non-ANFC income received by the assistance group during the month. When the total less applicable disregards exceeds the standard of need for that family, the family will be ineligible for ANFC for the number of full months derived by dividing this total income by the need standard applicable to the family. Any remaining income will be applied to the first month of eligibility after the disqualification period.

The period of ineligibility due to a lump sum benefit may be recalculated if:

1. An event occurs which, had the family been receiving assistance, would have changed the amount paid.
2. The income received has become unavailable to the family for circumstances beyond its control. Such circumstances are limited to the following unless the Commissioner of Social Welfare or his or her designee determines that the recipient's circumstances are substantially similar to those described below:

. . .

- g. payment of expenses which meet the following criteria:
 - (1) The bills were overdue as of the date the lump sum income was received.
 - (2) The bills were the legal liability of the client or other member of the assistance group.
 - (3) The client provides documentation that the lump sum income was used to pay the bills.

Eligible expenses under "g" above are as follows and are restricted to those of the primary residence and would include any late charges described in payment agreements or allowed by Public Service Board rules.

- a. overdue rent (including lot rent)
- b. overdue mortgage payments (principal and (interest)
- c. overdue property taxes
- d. overdue homeowner's insurance

- e. overdue heating bills
- f. overdue utility bills (e.g. electricity, gas, water or sewage)

Other eligible expenses:

- g. overdue telephone bills (basic monthly charge, applicable taxes, plus \$5 per month in toll charges)
- h. overdue child care expenses necessary for a member of the assistance group to maintain employment, with the following limitation. If the overdue expenses were incurred when the individual was receiving ANFC, only the unsubsidized amounts attributable to employment-related child care are considered eligible expenses.
- i. overdue expenses for one motor vehicle per ANFC assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include overdue bills for repairs, purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.

. . .

As noted above, the Department allowed the petitioner a deduction for car repairs that it deemed "essential" for the petitioner's "education". However, the Department takes the position that tuition payments necessary to pursue education are not "substantially similar" to car repairs necessary for a student to attend classes. Although the board has allowed the Department latitude in applying the above section (see e.g., Fair Hearing No. 11,900) the Department's decision in this case defies logic and common sense. Clearly, tuition payments are equally, if not more, "essential" to pursue education as are car repairs in order to drive to classes. Inasmuch as the "substantially similar" criterion in the

above regulation was met, the Department's decision is reversed.

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